

**Memorandum of Decision: 01-20221055
Indiana Individual Income Tax
For the Year 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department erred in determining that Out-of-State Residents were not entitled to a refund of Indiana income tax withheld on their behalf by an Indiana employer; the Residents' return requesting the refund was filed within three-years of the date the original return was due.

ISSUE

I. Indiana Individual Income Tax - Withholding Tax Refund.

Authority: IC § 6-3-2-2(a); IC § 6-8.1-9-1.

Taxpayers argue that the Department erred in denying them a refund of Indiana income tax withheld on their behalf during the year 2017.

STATEMENT OF FACTS

Taxpayers are former Indiana residents who now live outside Indiana. During 2017, Taxpayers worked for and were paid by Indiana employers. According to a 2021 letter provided by a former employer, one of the Taxpayers worked for the former employer "since November 7, 2011, . . ." but "relocated from Indiana to Virginia in 2016." As explained in the former employer's letter, the Taxpayer "did not work or live in Indiana in 2017 . . ." and confirmed that the Taxpayer's "state and local taxes were incorrectly withheld in Indiana in 2017 and 2018."

Taxpayer submitted a 2017 "Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return" (IT-40PNR) seeking a refund of approximately \$2,300 explaining that they resided in Illinois for six months and lived in Indiana the remainder of the year. According to the Department's records, Taxpayers' return was postmarked February 16, 2021.

The Indiana Department of Revenue ("Department") responded in a letter dated October 27, 2021. In that letter, the Department indicated it was denying the refund. The letter explained:

The Indiana Department of Revenue (DOR) reviewed your claim for a refund and must deny it due to state law. Indiana Code § 6-8.1-9-1 states that in order to receive a refund, a claim must be filed within three years after the due date of the return or date of payment, whichever is later. Your request and claim for a refund were filed outside of the time frame and must be denied for the following filing period: December 31, 2017.

Taxpayers disagreed with the Department's decision and timely filed a protest. An administrative hearing was conducted by phone on May 26, 2022. This Final Order Denying Refund results and is based on the information included with Taxpayers' protest and the Department's records.

I. Indiana Individual Income Tax - Withholding Tax Refund.

DISCUSSION

The issue is whether Taxpayers have met their burden of establishing that the Department erred in denying them a refund of 2017 Indiana income tax.

Taxpayers provided an explanation in their protest letter:

The taxpayers never owed any Indiana tax for the year 2017. They were never in Indiana in 2017.

[Husband's] employer incorrectly withheld state and local tax. [Husband] was a Virginia resident and did all work in Virginia.

Taxpayer explains further:

The taxpayers filed a claim for refund within three years of the due date including a letter from the employer. The claim was improperly denied. The refund claim was filed within three years of the due date. The claim was improperly denied since [] the claim was within three years of the return due date.

In general, if any taxpayer believes that he or she has overpaid the tax, the taxpayer is required to timely file a claim for a refund with the Department. Specifically, IC § 6-8.1-9-1(a), in relevant part, states:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (j) and (k), **in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:**

- (1) The due date of the return.**
- (2) The date of payment.**

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund. **(Emphasis added).**

The due date of the original return was April 18, 2018. The IT-40PNR was filed with the Department and postmarked February 16, 2021. The time between those dates is 1,035 days or 2 years, 9 months, 29 days (excluding the end date). As such, and on its face, the refund request is timely.

Taxpayers' employers submitted two withholding payments. Both payments were submitted on January 19, 2018. Bearing in mind that IC § 6-8.1-9-1(a) allows taxpayers to submit a refund claim three years from the date the return was due or the date *the payment was made*, the time between the February 16, 2021, return and January 19, 2018, payment date was 1,124 days or 3 years, 28 days excluding the end date.

The Department here notes that Taxpayer's IT-40PNR states that Taxpayers were 2017 residents of Indiana for six months and residents of Illinois for the remainder of that year. In addition, the 2017 W2s indicate Taxpayers received income from an Indiana employer during 2017. Indiana Taxpayers have provided nothing which would establish that they filed either Illinois or Virginia income tax on what is apparently Indiana-source income pursuant to IC § 6-3-2-2(a).

The Department is unable to fully reconcile Taxpayers' assertions with the records and information available to the Department. Nonetheless, the only issue raised by the Department in denying the refund was the timeliness question. The Department agrees that under the IC § 6-8.1-9-1(a) "due date of the return" provision Taxpayers' request was timely.

On the sole issue of whether Taxpayer's refund request was timely filed, Taxpayer's protest is sustained.

FINDING

Taxpayers' protest is sustained.

June 3, 2022

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